



Print Form

FOR CLERK USE ONLY
City Council
Item No. 11

CITY COUNCIL AGENDA FACT SHEET

City Attorney (Romero request)

Department

September 7, 2010

Requested Date

1. Request:

Council Approval

Information Only/
Presentation

Other (specify)



Hearing



2. Requested Action:

CONSIDERATION OF STANDARD AGREEMENT FOR TEMPORARY EMPLOYMENT SERVICES

3. Fiscal Impact:

Revenue:

Increase



Source:

Decrease



Amount:

\$

Cost:

Increase



Source:

N/A

Decrease



Amount:

\$

Does Not Apply ☒

4. Reviewed By:

Finance Dept. on

By:

Comments:

City Attorney on

8-31-10

By:

J. Lyon

Comments:

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE:

Action



Filing



Consent



Presentation



Hearing



Other(specify)



Reviewed by: City Clerk

City Manager

Date

Date

CITY COUNCIL AGENDA REPORT

**SUBJECT: CONSIDERATION OF STANDARD AGREEMENT FOR TEMPORARY
EMPLOYMENT SERVICES**

AGENDA DATE: September 7, 2010

PREPARED BY: Jennifer M. Lyon, City Attorney (Requested by Councilman Romero)

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

**RECOMMENDATION: Consider standard agreement for temporary employment
Services and provide direction to staff as appropriate.**

FISCAL IMPACT: None yet. If the City needs to obtain temporary employment services, there will be funds expended.

BACKGROUND: The City has previously used the services of temporary employment agencies on a case-by-case and as needed basis over the last several years. As of September 2, 2010, the City has terminated all temporary employment contracts.

DISCUSSION (Current consideration): In the event that the City has a need to obtain the services of a temporary employment agency in the future, the Council may consider using the form of contract attached to this staff report. The contract is based upon the standard City service contract template with a few additions for the specific type of service. Exhibits A and B would be filled out when and if the City needs to contract for temporary services and would contain the types of positions to be filled as well as the rate at which the employment services would be provided. The contract contains the standard insurance and indemnification obligations required of most companies who contract with the City.

Because the City may not be in need of these services at this time, this agenda item does not authorize the execution of any contract with any particular agency. When and if the City needs to obtain any such services, a specific agenda item will be brought to Council for authorization. If Council has any suggested modifications to this draft contract, please provide those comments.

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the ____ day of ____, 2010, by and between the City of Calexico ("City") and ____ ("Company").

RECITALS

A. Company is specially trained, experienced, certified and competent to perform the special services which will be required by this Agreement which is the provision of temporary labor to the City; and

B. Company possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

AGREEMENT

1. Scope of Services. The Company shall furnish temporary employment services in a professional manner. Company shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Company shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City.

2. Time of Performance. The services of Company are to commence upon execution of this Agreement and shall continue until the one year anniversary date of execution of the Agreement unless terminated sooner pursuant to the terms of this Agreement. City may, upon 48 hours notice, inform Company that City no longer needs the services of a particular employee provided by Company under this Agreement. City shall thereafter not be responsible for payment of any costs for such dismissed employee. Time is of the essence for every provision of this Agreement that states a time for performance and for every deadline imposed by the City. Further, City shall review the services provided by Company under this Agreement on an annual basis.

3. Compensation. Compensation to be paid to Company shall be as set forth in Exhibit B attached hereto. Company is solely responsible for the payment of employer federal, state and local taxes for Company's employees, any employee benefits provided by Company to its employees, and all required federal, state and local employee payments or withholding from wages. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Unless otherwise agreed to in writing, fees shall be paid to Company no later than the day the Company's payroll is due, normally on ____ of each week. Company shall notify City with at least seven (7) calendar days in advance if the due date is otherwise. Any requests by Company for the City to make payment to a different

name/entity than Company shall be treated as a request for an assignment and the process outlined under Section 20 of this Agreement shall be followed.

5. Independent Contractor. It is understood that Company and any of its personnel, in the performance of the work and services agreed to be performed, shall act as and be independent contractors and shall not act as agents or employees of the City. Company or any of its personnel shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Company hereby expressly waives any claim it may have to any such rights.

6. Interest of Company. Company (including principals, associates and employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Company's services hereunder. Company further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement. Company is not a designated employee within the meaning of the Political Reform Act.

7. Professional Ability of Company/Provision of Labor. City has relied upon the professional training and ability of Company to perform the services hereunder as a material inducement to enter into this Agreement. Company shall therefore provide properly skilled personnel to perform all services under this Agreement. All work performed by Company under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Company's field of expertise. Company shall consult with City and assign employees who are qualified to fill the job functions specified by City. Any approval by City of any employee provided by Company does not relieve Company of the responsibility for complying with all applicable laws, codes, and good business practices. Company has sole responsibility for recruiting, hiring, training, evaluating, disciplining, replacing, and firing of individuals assigned to fill City's designated job positions. However, Client may reject an employee furnished by Company as specified in Section 2 above.

8. Indemnity.

(a) To the fullest extent permitted by law, the Company shall (1) immediately defend, and (2) indemnify the City, and its councilmembers, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Company's or Company's employees performance of services under this contract, or any negligent or wrongful act or omission of the Company's or Company's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Company's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of the City. If it is finally adjudicated that liability is caused by the comparative

active negligence or willful misconduct of the City, the Company's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party. This indemnification obligation specifically includes any lawsuits, actions or proceedings filed by Company's employees related to employment or payroll issues.

(b) The duty to defend is a separate and distinct obligation from the Company's duty to indemnify. The Company shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the City and its Councilmembers, officers, and employees, immediately upon tender to the Company of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. The defense shall be done by counsel approved by the City. An allegation or determination of comparative active negligence or willful misconduct by the City does not relieve the Company from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Company asserts that liability is caused in whole or in part by the negligence or willful misconduct of the City. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of the City, Company may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

(c) The review, acceptance or approval of the Company's work or work product by the City shall not affect, relieve or reduce the Company's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

10. Insurance Requirements.

a. Company, at Company's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Company shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California throughout the duration of this Agreement. In addition, Company shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Company for City.

ii. General Liability Coverage. Company shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit

iii. Automobile Liability Coverage. Company shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Company and employees of Company arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

b. Policy Endorsements. Each general liability, worker's compensation, and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Company, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Company shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Company shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein prior to approval and execution of this Agreement by the City and such certificates will be attached under Exhibit C to this Agreement. Thereafter, Company shall submit proof of current certification of insurance on the anniversary date of this Agreement to be kept on file with the City at all times during the term of this Agreement. Failure of Company to submit the certification forms annually or any changes in the insurance that do not meet the levels set forth in this Agreement, shall be grounds for immediate termination of this Agreement by City.

11. Compliance with Laws. Company shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

12. Licenses. Company represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Company to practice its profession. Company represents and warrants to City that Company shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Company to practice its profession. Company shall obtain a business license from the City of Calexico to be in effect for the duration of this Agreement. Company shall also complete a vendor registration form with the Department of Finance prior to commencement of this Agreement. All required licenses and forms specified in this Section shall be provided to the City prior to approval and execution of this Agreement by the City and such licenses/forms will be attached under Exhibit C to this Agreement. Thereafter, Company shall submit proof of current licenses/forms on the anniversary date of this Agreement to be kept on file with the City at all times during the term of this Agreement. Failure of Company to submit the certification forms annually, shall be grounds for immediate termination of this Agreement by City.

13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.

14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its

address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:

City of Calexico, City Manager
608 Heber Ave.
Calexico, CA 92231

If to Company:

15. Company's Books and Records.

a. Company shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Company to this Agreement.

b. Company shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Company's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Company's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Company, Company's representatives, or Company's successor-in-interest.

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Company. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Company and City and approved as to form by the City Attorney.

18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Company. Assignments of any or all rights, duties or obligations of the Company under this Agreement will be permitted only with the express written consent of the City Council. Company shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If the City Council consents in writing to such subcontract, Company shall be fully responsible to City for all acts or omissions of the subcontractor. When the City Council considers a request from Company to assign any or all of its rights under this Agreement to a different legal entity, the City Council shall consider Company's past performance and review all outstanding obligations under this Agreement and to any of Company's employees before approving or disapproving of the request to assign this Agreement. Any assignments or subcontracting made without the express written consent of the City Council shall render this Agreement null and void and City shall be entitled to immediately terminate this Agreement with no prior notice to Company. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

21. Termination. This Agreement may be terminated immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Company shall be entitled to compensation for services performed up to the effective date of termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

COMPANY:

Victor Carrillo
City Manager

APPROVED AS TO FORM:

Jennifer M. Lyon
City Attorney

ATTEST:

Lourdes Cordova
City Clerk

EXHIBIT A
SCOPE OF SERVICES
(to be attached)

EXHIBIT B

SCHEDULE OF CHARGES

EXHIBIT C
Proof of Insurance and Applicable Licenses